

1 (D) REMARKS, DRAWING AMENDMENTS

2
3 RESPONSE TO REJECTION UNDER SEC. 102

4
5 The issue is whether Martin et al. anticipates the present application.

6
7 The law is clear. A valid rejection on the ground of anticipation requires the disclosure in a
8 single prior art reference of each element of the claim under consideration. Soundscriber Corp.
9 v. U.S., 148 USPQ 298, 301 (1966); In re Donohue, 226 USPQ 619, 621 (Fed. Cir. 1985).

10
11 Martin et al. describes an

12 "AUTOMATED DEBT PAYMENT SYSTEM AND METHOD USING ATM NETWORK."

13 Title, emphases added.

14 It is, again in Martin's own words,

15 "An electronic *funds transfer* methodology for providing access to a plurality of non-bank
16 *loan payment* processors (loan servicers) through established ATM (automated teller
17 machine) networks, thereby creating a *payment system* designed to allow a consumer to
18 initiate an electronic *transfer of funds* from a primary bank transaction account (e.g.,
19 checking account, savings account) to a loan servicer to satisfy an *outstanding*
20 *consumer debt or payment of an obligation*." Abstract, first sentence, emphases added.

21 Each independent claim of Martin is to "debt payment ...using an ATM network..." (Cl. 1, 4, 5), or
22 "making a payment on one consumer debt obligation...using an ATM network...." (Cl. 8). This is
23 unrelated to the "real estate escrow" processes of the present invention, described in more
24 depth previously in response to this reference and hereinbelow.

25
26 It is also to be noted that "ATM NETWORK" is defined as a special network by Martin et al. at
27 col. 1: starting at line 17,

28 "These networks are *specialized digital packet networks* that communicate with various
29 ATM transaction processors and service providers using standard message protocols
30 developed by ANSI and others. A more-or-less standard, generic *ATM interface* has
31 developed in the banking industry, making it relatively easy for a consumer to use any

S/N. 09/033390
Applicant Docket No. CRT044US
Amendment AF2

1 ATM in any ATM network once he has learned how to interact with this more-or-less
2 standard interface." Emphases added. (Those specialized protocols are cited at col. 15:
3 II. 55-58.)

4 This is not, as in the present invention, the Internet using client-server software such as
5 Microsoft Internet Explorer™, Netscape™, and the like

6
7 FIG. 2 of Martin et al. "shows a block diagram of the present invention illustrating the
8 transactions that occur *during the process of a debt obligation payment in accordance with the*
9 *present invention.*" Emphasis added. Note particularly that it requires a "3rd Party Loan
10 Payment Facilitator" 26 and a "Loan Servicer" 24. See also Martin FIG. 4, 402, FIG. 5, 500,
11 FIG. 6, 608-612. These types of parties are not involved in a real estate escrow and this is
12 unrelated to the "real estate escrow" processes of the present invention, described in more
13 depth previously in response to this reference and hereinbelow.

14
15 FIG. 3 of Martin et al. "shows a flowchart illustrating the process of a *debt obligation payment*.
16 ..." The "User selects option to make loan payment and enters information to identify loan
17 payment and amount." 304. Again, this is unrelated to the "real estate escrow" processes of the
18 present invention, described in more depth previously in response to this reference and
19 hereinbelow.

20
21 Applicant's Invention Is Unrelated to Debt Payment

22
23 In many states, such as New York and New Jersey, to accomplish the transfer of real property
24 from one current owner, the Seller, to a succeed owner, the Buyer, requires the use of attorneys
25 by each party transfer. In many states, such as California and Washington, rather than the use
26 of attorney offices and services, the transfer of real property between a Seller and Buyer
27 requires the use of "escrow companies," e.g. Central Escrow, Inc., Exhibit A hereto, or
28 applicant's own company EZESCROW, and "title companies," e.g., Gateway Title Company,
29 Exhibit B hereto,. Such escrow companies and title companies are not lending institutions just
30 as law firms are not lending institutions. At the most, an escrow company will track any

S/N: 09/833390
Applicant Docket No.: CRT044US
Amendment AP2

1 borrowing-lending arrangements instituted by the Buyer with a bank, savings and loan,
2 mortgage broker, or the like, if and when the Buyer seeks a mortgage to finance the transaction.

3
4 First, the Office admits at Page 7 of the Action starting at about line 2,

5 "It is not simply an ATM machine to conduct banking transaction but an ATM network
6 path that is used to facilitate debt payment in this case mortgage." Emphases added.
7 Yet, applicant's invention has nothing to do with an ATM, a specialized network path, nor a debt
8 payment such as a mortgage payment. The arguments previously filed by applicant explaining
9 that such are post real estate escrow procedures is incorporated herein by reference in its
10 entirety.

11
12 In other words, the Office argues throughout and as a fundamental tenet of the bases for
13 rejection that Martin's processes are the same technically and under the law as a "real estate
14 escrow." E.g., Action, para. 3. No such equivalency can be sustained. As shown by the
15 accompanying EXHIBITS of real-world real estate escrow processes, and as well known in all
16 states such as California and Washington where real estate escrow companies operate, there
17 is no loan payment nor consumer debt nor mortgage obligation until a real estate escrow
18 is closed.

19
20 Attached as EXHIBIT A is a flow chart by Central Escrow, Inc., showing the "Life of an Escrow."
21 Note carefully that it is not until the penultimate step and clearly after "CLOSE FILE" that there is
22 a step of payment, "DISBURSE FUNDS." Escrow file is closed. The "real estate escrow"
23 process has at least all of the steps above this penultimate flow chart step. Attached as
24 EXHIBIT B is a flyer by Gateway Title Company. Note that in the center column under "The
25 Escrow Officer" it is the ultimate step where debt payment occurs, and this is under "Closes the
26 escrow by...". Also note that this is optional versus cash: "The Lender (When Applicable)."

27
28 It is simply impossible to conclude that a real estate escrow process as evidenced by these
29 EXHIBITS and known to persons skilled in the art is the equivalent in any way to Martin's "debt
30 payment" by "ATM" processes over a "specialized ATM network." The Office itself admits

S/N: 08/833390
Applicant Docket No.: CRT044US
Amendment AF2

1 Martin et al. is "...an ATM network path that is used *to facilitate debt payment*: in this case
2 mortgage," supra.

3
4 Further, and perhaps most telling of the Response to Arguments is the statement by the Office
5 that,

6 "As indicated by the Applicant, Examiner relied upon table 1 column 14 as a rationale for
7 the rejection." See, Response to Arguments, page 7, about line 6.

8 Only in Column 13, line 47-50 and Column 14, lines 8-13 is the word "Escrow" used anywhere
9 in Martin et al.; they read in their entirety:

10
11 "Outstanding Escrow Reserve Balance Current amount paid by the *borrower* and
12 held in escrow reserve by the servicer for
13 the *future payment of real estate taxes*,
14 *insurance*, etc.

15 * * *

16 Current Escrow Tax Owed Amount of *payment* that will be applied to
17 local property taxes managed by servicer, if
18 any

19 Current Escrow Insurance Owed Amount of *payment* that will be applied to
20 payment premium on *homeowners*
21 *insurance* managed by servicer, if any"

22 Emphases added.

23
24 Such "impounds" are well known in the art as required payment amounts to the lender or via the
25 lender's servicer in excess of a mortgage amortization payment when a real estate down
26 payment was low or the borrower's credit was poor. Martin's use of the misnomers "escrow
27 reserve," "escrow tax" "escrow insurance" for these "impounds" in fact evidences his lack of
28 knowledge of even the basics of real estate escrow processes. Martin's own words in fact
29 mean that a real estate escrow has closed. In a real estate escrow, there is no indebted
30 "borrower" until all loan documents are executed at close of escrow; note also that this is for
31 "future payment;" again, it must be post-closing of a real estate escrow. It is self-evident and

SA: 08/033390
Applicant Docket No.: CRT044US
Amendment AF2

1 definitional that no "local property tax s" are owed by the buyer until cl se of a real estate
2 escrow. Similarly no "homeowners insurance" is owed by the buyer until close of a real estate
3 escrow because he has no title interest to insure: title to the property in escrow has not passed
4 to the buyer until it is recorded with the County Recorder which also happens at the end of a
5 real estate escrow. No payments are made on such taxes and insurance "impounds" are
6 started until close of a real estate escrow. Returning to the Office's own statement at Page 7,
7 about line 4, supra, there is no "mortgage" payment until after close of escrow.

8
9 It can not be more clear than from Martin's own words that he is in fact not considering anything
10 but "automated debt payment system and method using ATM network" which *by definition*
11 excludes real estate escrow processes where funding and payment first occurs in closing the
12 escrow itself. No interpretation is necessary to reach a valid conclusion that Martin et al. in fact
13 speaks for itself in providing evidence *against* their having considered the complex processes
14 and multiparty needs (as shown by applicants FIGURE, the real estate escrow process
15 involves many parties, not just a debtor paying a lender which is a requisite feature Martin et al.)
16 in real estate escrow processes.

17
18 Applicant's Pending Claims

19
20 Turning to the specific claims remaining in the present application, again, the law is clear. The
21 absence from a reference of any claimed element negates anticipation. Kloster Speedsteel AB
22 v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed.Cir. 1986).

23
24 If by any stretch of the imagination could Martin et al. be considered relevant to real estate
25 escrow processes, *arguendo*, nowhere are the elements " . . . on-line entry and transmission
26 of escrow initiation, escrow instructions, escrow status tracking, and escrow
27 consummation between the server party and the client party" as added to amended
28 claim 4 from claim 5 in the present application ever mentioned in Martin et al. Each of these
29 multiparty, subprocesses require input data from the buyer and seller as to step-by-step
30 specifics of how the transfer of the piece of real property from the buyer to the seller. Clearly,
31 these subprocesses can not be implemented by an ATM . How, for example, could one use an

S/N: 09/833390
Applicant Docket No.: CRT044US
Amendment AF2

1 ATM to learn the status of an escrow officer's or title company's search of the County
2 Recorder's office as to the chain of title of a specific plot of land? It can not. How can one
3 generate "escrow instructions" using an ATM. They can not. These are just two of the many
4 escrow tasks prior to the execution of documents and close of escrow as shown by the present
5 application and indeed by the EXHIBITS filed herewith. Therefore Martin et al. cannot stand the
6 test of the law, *supra*. The Martin et al. patent makes no such disclosure. If the Examiner still
7 disagrees, applicant requests specific column and line numbers of the reference which disclose
8 these elements of claim 4.

9
10 Regarding applicant's claim 15, and again by an *arguendo* stretch of the imagination to force
11 Martin et al. to be relevant to real estate escrow processes, note that it is only the very last
12 element listed by present applicant, the "...DIGITAL TRANSFER OF ESCROW FUNDS..." to
13 which Martin et al. has allegedly provided a solution. Note that in the real world this is a payout
14 of the escrow holder which is neither a lender, a borrower, a loan servicer, a bank, nor the like,
15 within the common dictionary meaning of those terms or as those terms are used in the art.

16
17 A dependent claim includes all the limitations of the claim from which it depends and, as such,
18 makes specific that which was general. 35 U.S.C. 112; 37 C.F.R. Sec. 1.75(c); Allen Group,
19 Inc. V. Nu-Star, Inc., 197 USPQ 849 (7th Cir. 1978); Ex parte Hansen, 99 USPQ 319 (Pat. Off.
20 Bd. App. 1953). Dependent claims are non-obvious if the independent claims from which they
21 depend are non-obvious. In re Fine, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); see also Hartness
22 International, Inc. V. Simplimatic Engineering Co., 2 USPQ2d 1826, 1831 (Fed. Cir. (1987) to
23 the same effect re novelty). Thus, allowance of a base claim as patentable normally results in
24 allowance of a claim dependent upon that claim.

25
26 It is respectfully requested that the rejections be withdrawn.

27
28 Additional Legal Argument Response

29
30 A reference does not provide evidence of lack of novelty merely by using the same words. An
31 "apple" does not anticipate an "orange" just because it can also be described as being "round,

SN. 09/833390
Applicant Docket No. GRT044US
Amendment AF2

1 having an outer skin, and a juicy, pulpy core." A "specialized digital package network," supra,
2 does not anticipate the ubiquitous Internet. An "ATM" is not a PC; it is merely an "interface" to
3 the "specialized digital package network." A "loan servicer" is not an "escrow agent." "Debt
4 payment" is not, and has virtually nothing to do with, "real estate escrow" processes.

5
6 Martin et al. mention "mortgage" only as one type of consumer "debt" which requires a series of
7 payments. Col. 4: line 46; col. 6: ll. 38-53; col. 7-14; and col. 8: ll.5-6. Martin et al. misuse the
8 term of art "Escrow" in alluding to "impounds" which are another form of debt payment. Col. 13:
9 l. 48 and col. 14, lines 9, 16. These are all and the only references to specific parts of real
10 estate law and commerce. Nonetheless, as argued above and in prior responses, in using
11 these terms, the Martin et al. patent relates only to post-escrow payments. Yet the Action
12 alleges that these types of debts and the "impounds" described above make Martin et al.
13 anticipatory of applicants escrow processes. This force fit of "apples and oranges" is tortuous
14 *per se*.

15
16 The law is clear. Hindsight reasoning using the invention for which a patent is sought as a
17 template is impermissible. Texas Instruments, Inc. v. ITC, 26 USPQ2d 1018 (CA FC 1993). It
18 would appear from this application's file wrapper history itself that the Office is in fact not
19 keeping to the spirit of the Texas Instruments holding. Each Action is progressively seeking
20 new references against applicant's invention and attempting to force fit similar language from
21 references into applicants' mold based on the present application and the prior arguments filed
22 in support of allowance. This alone is hindsight. Moreover, the very practice of structuring
23 grounds for rejection by simply repeating applicants' claim language and then merely sticking
24 column and line citations of a reference therein is *de facto* use of the application as a
25 "template." With respect to any further rejections which may issue against this application,
26 unless a citation to column/line(s) of a reference is an exactly identical element to the present
27 application where there can be no ambiguity as to identity of actual structure, function, way and
28 result - - e.g., where a claim element is a "computer keyboard" and the reference "col. 10: ll. 10"
29 has a "computer keyboard" - applicants' respectfully request that each further rejections quote
30 the specific language from the reference alleged to equate to each claimed element so

S/N: 09/833390
Applicant Docket No.: CRT044US
Amendment AF2

1 rejected. In this manner the applicant will not be required to infer from a simple cite of "col. N:
2 line —..." what the Office is inferring.

3
4 It is respectfully requested that the rejections be withdrawn on this ground.

5
6 **SUMMARY AND CONCLUSION**

7
8 Real world real estate escrow transaction processes are not "debt payments." There is no due
9 and owing debt until after escrow. Martin et al. by his own words is a "debt payment" scheme.
10 Martin et al. by his own words provides no evidence to support the bases asserted to the
11 contrary by the Office under Sec. 102. In fact, there is not even the slightest hint that the
12 problem of handling the complicated, multi-party processes of real estate escrow transactions in
13 the manner of the present invention was considered by Martin et al. in providing their
14 "automated debt payment system and method using ATM network." The reference holds no
15 weight in supporting the Office's interpretation. Neither is it up to the Office to interpret nor
16 extrapolate a reference against its ordinary disclosure and use of terms. All Martin's process,
17 procedures, highly specialized network apparatus, and the rest only applies to debt payment
18 which is downstream of a real estate escrow procedure. The reference is not anticipatory or
19 even relevant.

20
21 Based upon the foregoing, it is submitted that the application now presents claims which are
22 directed to novel, unobvious and distinct features of the present invention which are an
23 advancement to the state of the art. Reconsideration and allowance of all claims is respectfully
24 requested. The right is expressly reserved to reassert any and all arguments, including the
25 raising of new arguments, and the filing of appropriate continuing procedures at the USPTO,
26 should a Notice of Allowance not be forthcoming. At this After Final stage and to advance
27 prosecution, applicant will not belabor the points on each argument proffered in the Final Office
28 Action, however, applicant specifically reserves the right to argue each paragraph 1-15 of the
29 present Action on a point-by-point basis in support of any continuing procedures at the USPTO.

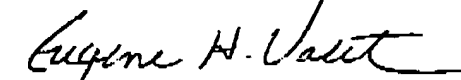
30

S/N: 09/833390
Applicant Docket No.: CRT044US
Amendment AP2

1 Questions or suggestions that will advance the case to allowance may be directed to the
2 undersigned by teleconference at the Examiner's convenience.

3
4 Date: 12 AUG. 2003

Respectfully submitted,



Eugene H. Valet
Attorney Reg. No. 31435
(425) 672-3147 fax 640-0525

11 Eugene H. Valet
12 Valet.Patents@verizon.net
13 314 10th Ave. South
14 Edmonds WA 98020//
15

SN: 08/833380
Applicant Docket No.: CRT044US
Amendment AF2